

COMMONWEALTH OF KENTUCKY
BEFORE THE ENERGY REGULATORY COMMISSION

* * * *

In the Matter of

| | |
|--------------------------------|----------------|
| ANNUAL REPORT FOR CALENDAR) | |
| YEAR 1980 REQUIRED BY ERC) | |
| REGULATION 807 KAR 50:015 -) | Administrative |
| GENERAL RULES, SECTION NO.) | Case No. 237 |
| 3(1) AND REPORT OF GROSS) | |
| OPERATING REVENUES DERIVED) | |
| FROM INTRA-KENTUCKY BUSINESS) | |
| FOR THE CALENDAR YEAR 1980) | |
| AS PROVIDED BY KRS 278.140) | |

RE:

O R D E R

On January 5, 1981, two (2) copies of the annual report form which contains a Balance Sheet, Statement of Income, and supporting schedules; and two (2) copies of the form titled "Report of Gross Operating Revenues Derived from Intra-Kentucky Business for the Calendar Year 1980" (gross operating report) are being mailed to all utilities subject to this Commission's jurisdiction. These reports are to be completed for the calendar year 1980 and filed with this Commission on or before March 31, 1981, as required by ERC Regulation 807 KAR 50:015 - General Rules Section 3 (1) and KRS 278.140. For good cause shown, the Commission may, upon application in writing, allow a reasonable extension of time for such filing of the annual report form; however, an extension of time for filing the gross operating report shall not be granted.

FINDINGS

The Commission having reviewed the various established regulations and general rules which apply to financial and statistical reports which shall be filed annually with the Commission and being sufficiently advised finds:

(1) The failure by this utility to file an annual report and a gross operating report is a violation of the Commission's Rules and Regulations; that such failure shall be interpreted by the Commission as contempt for the above-cited regulation; and that the Commission should seek an order from the appropriate court requiring the utility to comply with the Commission's order and regulation.

(2) That the Commission should seek the maximum penalty authorized by KRS 278.990 if the annual report form and/or the gross operating report form for the calendar year 1980 have not been filed on or before March 31, 1981.

(3) That a copy of KRS 278.990 should be attached and made a part of this order.

IT IS THEREFORE ORDERED that the above-named utility file with this Commission its gross operating report and its annual report for the calendar year 1980 on or before March 31, 1981.

IT IS FURTHER ORDERED that should the utility fail to file its gross operating report and/or its annual report for 1980 on or before March 31, 1981, the Commission shall direct its legal staff to file a suit against the utility for violating the Commission's regulation and this order demanding the maximum penalty authorized by

KRS 278.990. Once the court order has been issued requiring the utility to comply with the Commission's order and regulation, if the utility does not comply with the court's order, the legal staff is directed to seek a contempt citation.

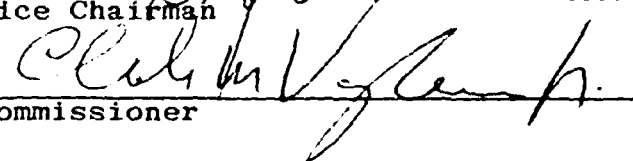
IT IS FURTHER ORDERED that a copy of KRS 278.990, setting forth the maximum penalty for failure to file, be attached to and made a part of this order.

Done at Frankfort, Kentucky, this the 5th day of January 1981.

ENERGY REGULATORY COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

Co v Holliday's Administrator. Telephone company, before June, 1904, erected poles on a highway under authority of the fiscal court, but not in the traveled part of the road or so near thereto to interfere with or obstruct public travel; it was not thereby a trespasser, nor were its poles a nuisance.

121 Ky 177, 89 SW 126 (1905), *Bevis v Vanceburg Telephone Co*; 120 Ky 34, 85 SW 204 (1905), *Cumberland Telephone & Telegraph Co v Avritt*. See for discussion of telephone companies on public highways.

54 SW 727, 21 KLR 1188 (1900), *Postal Telegraph Cable Co v Mobile & Ohio RR Co*. Prior to this act there was no law authorizing telegraph companies to condemn land.

INTERURBAN RAILWAYS

278.550 General powers and duties of interurban electric railway companies

(1) All interurban electric railway companies incorporated under the general railroad laws of this state and authorized to construct a railway ten miles or more in length shall be under the same duties and responsibilities, so far as practicable, and shall have the same rights, powers and privileges, as are imposed upon or granted to railroad companies by the statutes of this state, except as otherwise provided in KRS 278.010 to 278.450.

(2) Any interurban electric railway company incorporated under the general railroad laws of this state may acquire by contract with the owner any land, material or water right necessary for constructing, equipping and maintaining a reservoir within five (5) miles of its existing or proposed line, or for the purpose of obtaining from a lake or river a supply of water for its powerhouse, and conveying the water thereto by a pipeline. If the company cannot acquire the necessary land, material or water right by contract, it may condemn it in the same manner that railroad companies may condemn land for right of ways.

HISTORY: KS 842a-1, 842a-4

CROSS REFERENCES

See Kentucky Legal Forms, Form 1501.01(D)(2)

Public service corporation property tax, 136.120

Road obstructed by interurban railway to be put in good condition, 179.290

Condemnation of property for railroad purposes, 416.010 to 416.080

Interurban carrier, power of municipality to exact license tax or fee from, 31 ALR 594

141 Ky 583, 133 SW 230 (1911), *Com v Louisville & Eastern Railway Co*. An interurban electric railroad company authorized to construct a railroad ten miles long is required to sound its gong and electric whistle of its motors at such crossings as are mentioned in KRS 277.190 (KS 786).

128 Ky 768, 109 SW 361 (1908), *Devon v Cincinnati, Covington & Erlanger Railway Co*. Electric railroads may condemn land.

278.560 to 278.580 Repealed

HISTORY: 1974 H 393, § 64, eff. 6-21-74
KS 786, 842a-2, 842b-1

PENALTIES

278.990 Penalties

(1) Any officer, agent or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of KRS 278.010 to 278.450, or who procures, aids or abets any violation of those provisions by any such utility, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than six (6) months, or both. If any such utility that is a private corporation violates any of the provisions of KRS 278.010 to 278.450, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any lawful requirement or order of the commission having jurisdiction, the utility shall for each offense forfeit and pay to the state treasurer, to be credited to the general fund, a sum not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000). Each act, omission or failure by an officer, agent or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission or failure of the utility.

(2) Actions to recover the principal amount due and penalties under KRS 278.010 to 278.450 and this subsection shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under KRS 278.010 to 278.450 or this subsection, the commission having jurisdiction shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the state treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the state treasury and credited to the general fund.

(3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-five dollars (\$25.00) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.

(4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).

(5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars (\$100) for each offense.

(6) Any company that willfully fails to receive, transport and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of willful failure shall constitute a separate offense.

(7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the utility commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), to be recovered by indictment in the Franklin Circuit Court or in the circuit court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars (\$100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars (\$50.00) for each day he does or attempts to do such business.

(8) Any company that violates any of the provisions of KRS 278.520 or 278.530 for which there is no other penalty provided shall be fined five hundred dollars

(\$500) for each offense, and each day of such violation shall constitute a separate offense.

HISTORY: 1978 H 547, § 54, eff. 4-1-79

1974 H 393, § 47; KS 786, 842b-2, 2223-2, 3766b-1e, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4

CROSS REFERENCES

Jurisdiction of energy regulatory commission; application of other laws, 279.210

278.992 Civil penalty for certain pipeline violations

Any person who violates any regulation adopted and filed pursuant to KRS Chapter 13 by the energy commission governing the safety of pipeline facilities and/or the transportation of gas as those terms are defined in the Natural Gas Pipeline Safety Act of 1968, U.S. Congress, shall be subject to a civil penalty to be assessed by the energy commission not to exceed \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations. Any civil penalty assessed for such a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the Commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

HISTORY: 1978 H 547, § 55, eff. 4-1-79

1970 H 692